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April 15, 2016

National Freedom of Information Officer
United States Environmental Protection Agency
Office of Environmental Information
Records, FOIA, and Privacy Branch
1200 Pennsylvania Avenue NW (2822T)
Washington, D.C. 20460

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101

Re: Portland Harbor PCI Group
Freedom of Information Act Request – Revised April 15, 2016
Request No. EPA-R10-2016-004821
Portland Harbor Superfund Site

To Whom It May Concern:

This is a revised request for agency records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, provided in response to an April 1, 2016 letter from Sheila Fleming to the undersigned. This request, like the original request, is submitted on behalf of the Portland Harbor PCI Group, which is carrying out the Portland Harbor Superfund Site Allocation Process, and the individual members of the Portland Harbor PCI Group.¹ Specifically, this revised request concerns United States Environmental Protection Agency (EPA) records related to the Portland Harbor Superfund Site (Site) in Oregon.

¹ This request, like the original request, is submitted on behalf of each individual Portland Harbor PCI Group member except for the following parties, none of whom are participating in this FOIA request: City of Portland, Port of Portland, Oregon Department of State Lands, Oregon Department of Transportation, and all Federal PRPs, including the Bonneville Power Administration, Defense Plant Corporation, Reconstruction Finance Corporation, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of the Navy, U.S. General Services Administration, and U.S. Maritime Administration.

Throughout this request, the term "agency records" is intended to have the broadest and most inclusive meaning possible under the FOIA. As such, the term "agency records" includes, but is not limited to, all documents, agreements, contracts, reports, analyses, memoranda, emails, including email on personal accounts, transcripts, minutes, notes, bulletins, worksheets, schedules, calendars, drawings, photographs, renderings, figures, diaries, workpapers, presentations, data compilations, spreadsheets, databases, and communications created or obtained by EPA and under EPA's control at the time of this request. See *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-46 (1989).

Specifically, the term "agency records" includes, but is not limited to, all agency records in electronic, hard copy, or any other tangible or graphic format, however produced or reproduced, including audio or video recordings. "Communications" means any and all recorded communications within, to, or from EPA (and to, from, or among EPA's consultants and contractors working on the Site), including letters, electronic forms and submissions, emails, and text messages, including any attachment or enclosure included with the communication. "Communications" includes those communications generated by or contained on email accounts, computers, tablets, phones, and other electronic communication devices used to communicate information responsive to this request. This request is for agency records of EPA as a whole, and it is therefore not limited to agency records of EPA Region 10. In addition, the phrase "pertaining to" is intended to have its ordinary meaning, under which the phrase generally means "relating to, pertinent to, referencing, connected to, or relevant to."

On behalf of the Portland Harbor PCI Group, and also on behalf of each individual PCI Group member (excluding the parties listed in footnote 1), we request copies of the following agency records:

1. All agency records and communications pertaining to or otherwise reflecting EPA's "Decision to Complete the Portland Harbor Superfund Site Feasibility Study" and "not [to] require or direct the Lower Willamette Group to incorporate [EPA's] modifications and produce the draft final Feasibility Study," as described in and communicated to the Lower Willamette Group in a letter from EPA to Bob Wyatt dated January 4, 2016, and attached as **Attachment A**. This decision, as characterized in the preceding quotations and further described in **Attachment A**, is hereinafter referred to as the "EPA FS Takeover Decision." This request includes all agency records containing, discussing, or reflecting the facts, considerations, reasons, reasoning, and conclusions that were considered and / or that support the EPA FS Takeover Decision, as well as agency records that refer to or relate in any way to the EPA FS Takeover Decision, and agency records that refer to or relate to EPA's consideration of alternatives to the EPA FS Takeover Decision.

2. All agency records pertaining to EPA's November 18, 2015 presentations to the Contaminated Sediments Technical Advisory Group (CSTAG) and National Remedy Review Board (NRRB) regarding the development of a Remedial Investigation, Feasibility Study, and Proposed Plan for the Site, and to comments received by EPA in response to EPA's presentations. This request includes all agency records and comments sent to or received from the CSTAG, NRRB, any other public entity, and any private entity or person, including EPA's contractors, counsel, consultants, or other agents. This request also includes, but is not limited to, any correspondence within, to, or from EPA regarding such comments.
3. From March 1, 2012 to the date of this revised request, all agency records containing or pertaining to communications between EPA Region 10 staff and the CSTAG, NRRB, CDM, or other EPA offices (including the individual staff members, consultants, and other representatives of those entities) regarding the Site, including but not limited to agency records pertaining to the preparation, development, and revision of the Site Remedial Investigation, human health and ecological risk assessments, and the Site Feasibility Study.
4. All agency records pertaining to NRRB's and CSTAG's consideration and review of the proposed cleanup action for the Site, hereinafter referred to collectively as the "NRRB Review."
5. From March 1, 2012 to the date of this revised request, all agency records containing or pertaining to communications between EPA and the United States Fish & Wildlife Service or United States Department of Interior, including the individual staff members, consultants, and other representatives of those entities, regarding the EPA FS Takeover Decision, the NRRB Review, the preparation, development, or revision of the Site Remedial Investigation, human health and ecological risk assessments, or the Site Feasibility Study.
6. From March 1, 2012 to the date of this revised request, all agency records containing or pertaining to communications between EPA and the Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, the State of Oregon, and any employee, consultant, official, or other representative of the Oregon entities identified in this paragraph, regarding the EPA FS Takeover Decision, the NRRB Review, the preparation, development, or revision of the Site Remedial Investigation, human health and ecological risk assessments, or the Site Feasibility Study.
7. From March 1, 2012 to the date of this revised request, all agency records containing or pertaining to communications between EPA and the Portland Harbor Community Advisory Group (CAG), Willamette Riverkeeper, the Portland Harbor Community Coalition, and Portland Audubon, or other citizen or interest groups (including the individual staff members, consultants, and other representatives of those entities), or individual members of the public, regarding the EPA FS Takeover Decision, the NRRB

Review, the preparation, development, or revision of the Site Remedial Investigation, human health and ecological risk assessments, or the Site Feasibility Study.

8. From March 1, 2012 to the date of this revised request, all agency records containing or pertaining to communications between EPA and the Portland Harbor Natural Resource Trustee Council (Trustees) regarding the EPA FS Takeover Decision or the NRRB review, as well as any separate communications between EPA and the individual staff members, counsel, consultants, and other representatives of any one or more members of the Trustees regarding the EPA FS Takeover Decision, the NRRB Review, the preparation, development, or revision of the Site Remedial Investigation, human health and ecological risk assessments, or the Site Feasibility Study.
9. From March 1, 2012 to the date of this revised request, all agency records containing or pertaining to communications between EPA and the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and Nez Perce Tribe (including the staff, counsel, consultants, and other representatives of these entities) regarding the EPA FS Takeover Decision, the NRRB Review, the preparation, development, or revision of the Site Remedial Investigation, human health and ecological risk assessments, or the Site Feasibility Study.
10. From March 1, 2012 to the present, all agency records containing or pertaining to communications between EPA, the Portland City Council, and the Portland Harbor Community Advisory Group discussing, mentioning, or pertaining to the relationship of the 2016 Presidential Election and the timing of EPA's presentation of a plan for cleaning up the Site or the timing of EPA's issuance of a Record of Decision for the Site.
11. From March 1, 2012 to the present, all agency records containing or pertaining to, or otherwise reflecting, breakdowns of the estimated cost of proposed remedial alternatives for the Site. Specifically, the PCI Group is seeking records that contain, pertain to, discuss, or otherwise reflect cost estimates for each sediment management area under each of the proposed remedial alternatives under consideration by EPA (i.e., proposed remedial alternatives B, C, D, E, F, and G).

If a given agency record is responsive to more than one individual request or is found in more than one location, EPA need not provide multiple copies or duplicates of the same record. Likewise, EPA need not produce records that are responsive to this request if those records have already been given to the PCI Group or are otherwise readily available (i.e., online) so long as EPA identifies when the records were provided and to whom, or where they can be obtained. All responsive records that have not been provided, or that are not readily available, must still be provided in response to this request.

We will accept responsibility for the reasonable and necessary costs associated with EPA's response to this request, including reasonable standard charges for document searching and duplication, up to a maximum amount of \$10,000.00. See 5 U.S.C. § 552(a)(4)(A)(ii)(III); 40 C.F.R. § 2.102(d). If EPA determines that the reasonable and necessary costs of responding to this request will exceed \$10,000.00, please contact us as soon as possible to discuss payment. If for some reason copies of certain agency records cannot be made or provided, we request an opportunity to view and inspect those agency records.

If it is EPA's position that any of the agency records requested in this letter are exempt from disclosure under the FOIA, EPA must nonetheless provide any reasonably segregable portions of those agency records after deleting or redacting the purportedly exempt portions. 5 U.S.C. § 552(b); *Pebble Ltd. P'ship v. U.S. Envtl. Prot. Agency*, No. 3:14-cv-0199-HRH, 2016 WL 128088, at *3 (D. Alaska Jan. 16, 2016); see also Attorney General Eric L. Holder, Memorandum for Heads of Executive Departments and Agencies (Holder Memorandum), 74 Fed. Reg. 49892-01 (Sept. 29, 2009), 74 Fed. Reg. 51878-02 (Oct. 8, 2009) ("Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information.").

If EPA withholds all or any portion of a record requested in this letter, EPA must indicate in the response the amount of information that is withheld, deleted, or redacted, as well as the basis for each withholding, deletion, or redaction. 5 U.S.C. § 552(b); 40 C.F.R. § 2.104(h). Please provide an index or catalogue of responsive agency records that EPA intends to withhold in full or in part, as well as an individual explanation for each full or partial withholding, consistent with the holding in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

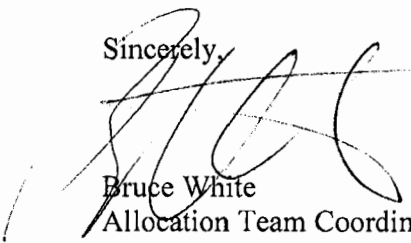
If EPA chooses to withhold segregable portions of any agency record that is responsive to this request, please use blackout redactions rather than deletions or whiteout redactions. If agency records that would otherwise be responsive to this request have been destroyed or are no longer in EPA's control, please identify each record, the date of destruction, and the person(s) who destroyed the record.

The President has observed that "[a] democracy requires accountability, and accountability requires transparency." Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Presidential Memorandum), 74 Fed. Reg. 4683 (Jan. 21, 2009). In light of those principles, the President has instructed all federal agencies, including EPA, to "adopt a presumption in favor of disclosure" when making decisions involving FOIA. *Id.* That instruction is consistent with the underlying legislative purpose of the FOIA, a statute whose basic purpose is to instill "a general policy of full agency disclosure" *Dep't of Air Force v. Rose*, 425 U.S. 352, 360 (1976), quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965).

The President has further instructed federal agencies to "act promptly and in a spirit of cooperation" when responding to FOIA requests, "recognizing that such agencies are servants of the public." Presidential Memorandum, 74 Fed. Reg. at 4,683. Similarly, the FOIA guidelines issued by then-Attorney General Eric L. Holder in 2009 "strongly encourage agencies to make discretionary releases of information," and they explain that "an agency should not withhold information simply because it may do so legally." Holder Memorandum, 74 Fed. Reg. at 51878-02.

We trust that EPA will take seriously its obligations under the FOIA, the Administrative Procedures Act, and the above-referenced Executive directives for implementing these statutes when responding to this request for agency records. We invite you to contact us as soon as possible to arrange for delivery of the agency records requested. In the meantime, we appreciate your prompt attention to this request, and look forward to your response.

Sincerely,



Bruce White

Allocation Team Coordinating Counsel

Request made on behalf of the Portland Harbor PCI Group and each individual member of the Portland Harbor PCI Group (excluding the parties listed in footnote 1).

bw/sam
attachment
cc: Lori Cora



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

JAN 04 2016

Mr. Bob Wyatt
Chairman, Lower Willamette Group
c/o Northwest Natural
220 Northwest Second Avenue
Portland, Oregon 97209

Re: Portland Harbor Superfund Site, Administrative Order on Consent for Remedial Investigation and Feasibility Study; Docket No. CERCLA-10-2001-0240; EPA Decision to Complete the Portland Harbor Superfund Site Feasibility Study

Dear Mr. Wyatt:

I am writing to inform you that the U.S. Environmental Protection Agency will finalize the Feasibility Study for the Portland Harbor Superfund Site and not require or direct the Lower Willamette Group to incorporate our modifications and produce the draft final Feasibility Study. By letter dated, December 18, 2012, the EPA notified the LWG that we did not approve its March 2012 draft FS, and listed key deficiencies. After the disapproval notice, we agreed to coordinate our proposed modifications section by section with the LWG, as documented in the Portland Harbor Superfund Site Revision Process for Feasibility Study, modified December 15, 2014. In accordance with the agreed process, the EPA shared Sections 1 and 2 on July 8, 2014, and February 23, 2015, and the LWG and EPA discussed the LWG's comments on those sections. We provided Section 3 on July 29, 2015 and Section 4 on August 7, 2015. Since release of those sections, the LWG has met to talk through the Decision Trees on November 2, 2015, and December 3, 2015, and the LWG has provided extensive comments on those sections. The EPA is considering the LWG's comments and will make appropriate changes in the revised final FS. The LWG provided the National Remedy Review Board and Contaminated Sediments Technical Advisory Group (NRRB and CSTAG) with comments and concerns on the FS and direction of the cleanup for Portland Harbor. The Region is also considering those comments in revising the FS.

To keep the remedy selection process moving forward and publish a Proposed Plan by March 2016, the EPA decided to complete the Feasibility Study rather than direct the LWG to incorporate our changes and produce the report. EPA can complete the work otherwise required of the LWG under the Administrative Settlement Agreement and Order on Consent (AOC) because the 2012 draft FS was disapproved as deficient. See Section IX, Paragraph 1 and Section XIX, Paragraph 9. Furthermore, EPA can more effectively and efficiently incorporate changes to the FS to address stakeholder comments, the NRRB and CSTAG recommendations, and any issues raised during government to government consultations with Tribal governments.

Given the EPA's decision, we expect the LWG has questions about the status of its remaining work under the AOC, and dispute resolution rights. Work remains to be done under the AOC. The LWG must finalize the Remedial Investigation Report (RI).

Attachment A

The EPA will soon provide its last comments on the RI and request the LWG to incorporate our last changes. We too may seek the LWG's assistance in providing information for the administrative record. Additionally, until we seek public comment and finalize the Administrative Record, the EPA will not know that we have "all appropriate necessary information for the RI/FS for a CERCLA Record of Decision." See Section IV, Paragraph 2. If new information is raised by public comments that EPA decides requires supplemental RI or FS work, we may ask the LWG to conduct that work. Although the EPA doesn't expect this to happen, the AOC will remain open and effective in order to cover that possibility. See generally, Section XXXVIII, Termination and Satisfaction. Additionally, not all of EPA's response costs have been billed and reimbursed under the AOC.

Regarding dispute resolution, the EPA notified the LWG in December 2012 that it disapproved the LWG's 2012 draft and would be modifying it. The opportunity to dispute EPA's disapproval of the 2012 draft has technically passed; however, given EPA is now deciding to finalize the FS rather than simply modify it, the EPA believes it is reasonable that, in accordance with Section XIX of the AOC, the LWG have the opportunity, if it chooses, to dispute EPA's decision to disapprove the LWG's 2012 draft. Additionally, the dispute resolution provision arguably does not apply to the EPA's FS modifications because we are not requiring the LWG to incorporate them and produce the FS. See Section XIX, Paragraph 1, and Section XVIII, Paragraph 1. However, we will provide the LWG an opportunity to raise a dispute on the August 2015 modified FS so we can consider the LWG's issues in producing the final FS.

Therefore, in accordance with Section XIX, Paragraph 1, within 14 days of receipt of this notice, the LWG may, if it chooses, invoke dispute resolution on: (1) EPA's disapproval of its 2012 draft FS; and/or (2) EPA's August 2015 modified FS by notifying the EPA Project Manager, Kristine Koch, in writing of their objections. The LWG's written objections shall define the dispute, and state the basis of its objections. For an additional 14 days, the EPA and the LWG have an opportunity to resolve the disputed issues. If the LWG's disputed issues are not resolved within the 14-day informal resolution timeframe, the LWG may request a final determination by the EPA.

The EPA hopes the LWG is as pleased as we are that the project is close to the remedy selection phase and is moving toward actual cleanup after 15 years. The EPA understands that there are a number of issues raised in this letter. We would be happy to discuss any questions you have about our decision. Please contact Debbie Robinson at (206) 553-4961 or Robinson.Deborah@epa.gov to set up a meeting or conference call.

Sincerely,



Cami Grandinetti
Program Manager
Remedial Cleanup Program